

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 19,017
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a policy of Department for Children and Families, Economic Services (DCF) requiring his physician to submit information for prior authorization for his prescriptions under the Medicaid program at intervals which are inconvenient for him.

FINDINGS OF FACT

1. The petitioner takes four medications for which his physician must request prior approval from the Medicaid program. He takes two other medications which are pre-approved.

2. Under policies used by DCF, most approvals must be renewed every three months. The petitioner believes this is oppressive for both him and his physician because his prescriptions are not synchronized on three month schedules causing him to need to remind his physician on a frequent basis to submit prior approval requests and necessitating

frequent pharmacy trips because he cannot obtain prescriptions for long periods of time.

3. The petitioner's physician wrote to DCF asking for a one year concurrent approval for all of his medications.¹ DCF denied that request but did agree to extend three of his medications to a six month approval period. The fourth medication is already on a five-year approval schedule. DCF declined to further extend the approval period because it was "clinically inadvisable." DCF also suggested to the physician that he synchronize the prescriptions so that he could send one request for all of them every six months.

4. DCF explained to the petitioner that certain medications, including the four at issue, were on a prior approval list because of legislative directives to establish utilization review procedures to ensure "best practices" and "cost control."

ORDER

The decision of DCF is affirmed.

¹ That request originally concerned six medications but since it was made two of the medications were moved to the status of not requiring prior approval.

REASONS

DCF has adopted a lengthy set of regulations in the Medicaid program which deal with prior authorization processes for certain "health services" including drugs.

M106. The goals of the process is to "assure that the proposed health service is medically needed; that all appropriate, less-expensive alternatives have been given consideration; and that the proposed service conforms to generally accepted practice parameters recognized by health care providers in the same or similar general specialty who typically treat or manage the diagnosis or condition."

M106.1. A drug may be placed on the list for prior approval for a number of reasons including monitoring and managing program funds and preventing the continuation of [the drug] when it ceases to be beneficial." M106.2. Once a drug is placed on the prior approval list, the beneficiary's physician must complete a "medical necessity form" and submit it for approval. M106.3.

DCF has adopted a prior approval drug list based on a specific directive from the legislature to DCF to contain the costs of prescription drugs in the Medicaid program and to maintain a preferred drug list. 33 V.S.A. § 1998(a)(1)(A) and (2). There is nothing in the regulations which

establishes a time period for authorization review for these drugs. However, DCF has developed a time period for each drug on the listing which is contained in a table available to the public online. Each of the drugs at issue in this case has a three month review period.

DCF maintains that it is within the discretion of the medical director to determine when variations are granted from these review procedures. The petitioner has presented no legal argument that would controvert this position. As it is within the discretion of the director to determine whether to vary the time for review, the Board's only role is to determine whether that discretion has been abused.

In this case the director considered the information provided by the petitioner² and responded to it by agreeing to extend the review time to twice the normal period. The director gave a reason (clinically inadvisable) to the petitioner for his decision not to further extend the time to one year. As the director's decision considered the facts, responded to them, and gave a reason for only partially granting the relief, it cannot be said to be arbitrary or

² The response to this letter took an extraordinarily long time (over six months) and probably would not have been forthcoming without the petitioner's filing for a fair hearing. However, that is not ground to overturn the decision on its merits.

abusive. As the Board has no legal ground to overturn this decision, it must be affirmed.

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